

Form T-1 Notice of Proposed Rulemaking
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Introduction: These comments are intended to respond to the Department of Labor's proposed rule ("NPRM") for T-1 reporting found in the March 4, 2008 *Federal Register* (Vol. 73, No., 43); they respond to the methodology used to estimate the burden hours and costs associated with the Form T-1. These comments utilize a work measurement approach to expose the numerous flaws in the methodology, data, assumptions and results used in this NPRM. Work measurement has been used by industrial engineers for many decades to develop time standards for completing a wide variety of tasks, both industrial and office, and is ideally suited for burden analysis here.

Work measurement is the

systematic study of work systems with the purposes of (1) developing the preferred system and method—usually the one with the lowest cost; (2) standardizing this system and method; (3) determining the time required by a qualified and properly trained person working at a normal pace to do a specific task or operation and (4) assisting in training the worker in the preferred method.¹

Work measurement, according to Barnes and other internationally recognized industrial engineering experts, begins with the objective of designing "a system, a sequence of operations and procedures that make up the preferred solution." Once this has been done, the next step is to develop "a written standard practice giving a detailed record of the operation and specifications for performing the work". However, as Barnes and others emphasize, "a job can not be measured until it has first been defined."²

Work measurement principles have long been applied both to factory and office work tasks. The end result here is the same as burden analysis: to determine how much time should be allowed to complete a given sequence of tasks and how much it should cost—in this case, it is how long it should take to complete the non-recurring, recordkeeping and reporting tasks to complete Form T-1.

¹ R.M. Barnes, "Motion and Time Study: Design and Measurement of Work", 7th edition, John Wiley and Sons, NYC, 1980, page 7.

² Op. cit., pages 7-8.

The burden analysis used in the NPRM for Form T-1 relies on four interrelated steps:

1. Specification of the tasks an LM-2 filer must undertake in order to prepare a single Form T-1, including the non-recurring, recordkeeping and reporting times. The result here is an average number of hours it should take one LM-2 filer (and the trust to prepare and furnish the necessary data) to prepare a single Form T-1.
2. In order to get the total burden hours for all T-1s, DOL first estimates the number of LM-2 filers who must file at least one Form T-1. DOL estimates the number of LM-2 filers who would file at least one T-1 by tiers.
3. Next, of those LM-2 filers who would file at least one T-1 in each of the three tiers, the NPRM then estimates the number of T-1 forms that this subset would actually file within each tier. Therefore, the total number of T-1's filed is a weighted average: within each tier, the total number of LM-2 filers is first multiplied by the estimated number who may file at least one T-1 form and then this product is multiplied by the estimated number of T-1's that will be filed by this subgroup. The products of all three tiers are summed and multiplied by 30%, which somehow accounts for the increased number of T-1s that will be filed since the Form 5500 exemption has been removed; no explanation, methodology nor justification for this 30% is provided anywhere in the NPRM.
4. To calculate the total cost, the NPRM attempts to estimate a cost per hour, in this case for labor only, which is multiplied by the weighted average burden hours per T-1 filer, to obtain the total annual cost for the first and succeeding years.

The total burden hours and burden cost for all T-1's may be expressed in the following formulas:

$$\begin{aligned} \text{Total burden hours} &= \text{Step 1} \times \text{Step 2} \times \text{Step 3} \\ \text{Total burden cost} &= \text{Step 1} \times \text{Step 2} \times \text{Step 3} \times \text{Step 4} \end{aligned}$$

It is therefore axiomatic that if just one step result is incorrect, the product, total burden hours or total burden cost, will also be incorrect. But as my analysis below demonstrates, results from each of the four steps are significantly flawed and therefore, the burden hour and cost estimates must be rejected. Each of the four above-mentioned steps is now discussed in greater detail from a work measurement perspective.

Step 1: What are the tasks, which Form T-1 filers must complete, and how much time should each of these tasks take to complete?

In this first step, the major flaws include the failure to describe in sufficient detail all the specific tasks the LM-2 filer and trust must complete, to specify who (which person, or at least which job classification) will complete the tasks so specified and to provide a methodology for how the time values were arrived at. The lack of transparency and detail here prohibits a more thorough review of the NPRM methodology. Survey data of some 40 trusts are presented here which shows that the burden estimates for generating the receipts, disbursements and payments to employee and officer information to significantly underestimate the time required.

The first step to this process, from an industrial engineering perspective, should be to prepare a flow chart of all the tasks necessary to perform the "non-recurring, recordkeeping and reporting" burden associated with Form T-1, in sequence order, with as much detail as possible, in order to develop the "preferred method". Once this flow chart and task list has been finalized, duplicative steps and unnecessary tasks can be eliminated, the process streamlined and documented, resulting in what many call a "who, what, when and where recipe". Then and only then is it possible to apply work measurement principles to determine how much time should be allotted for a trained and qualified person to complete each step of the process. But this time measurement cannot be completed until the "job has been defined".

The NPRM presents the task list and allotted times in Table 3, page 11775. This table has been reproduced below in figure 1 for discussion purposes. Note that the three column totals in figure 1 below, 30.4, 23.2 and 18.2, sum to 71.8, not 71.7; the NPRM uses the 71.7 total repeatedly.

Figure 1: Reproduction of Table 3, page 11775, NPRM

Reporting or recordkeeping element (2008 NPRM)	Nonrecurring	Reporting burden	Recordkeeping
Information on Form T-1 provided to trust	0.0	2.4	0
Review Form T-1 and instructions	0.0	4.3	0
Install, test and review software	8.0	0	0
Pages 1 and 2 of T-1 form	0.0	6.1	1.6
Individually-identified receipts	9.8	1.2	8.3
Individually-identified disbursements	9.8	1.4	8.3
Disbursements to officers and employees	2.8	0.8	0
Review by trust	0.0	2	0
Form/Information sent to labor organization	0.0	1	0
President review and sign off	0.0	2	0
Treasurer review and sign off	0.0	2	0
Total first year burden	30.4	23.2	18.2

Nowhere in the NPRM is there any detailed description of what individual tasks are included in the first column nor is there any methodology or discussion of how the allotted times in the columns to the right were determined, except the assertion that this methodology was presented in earlier versions of this rule.

Industrial engineering practitioners are accustomed to a considerably higher degree of transparency and detail in documenting the methodology used to determine how much time a particular task or sequence of tasks should take. A myriad of questions is generated by this complete lack of transparency, of which the following are just a few:

- How are we to know that all the tasks necessary to complete Form T-1 by the LM-2 filer (and the trust) have actually been included here?
- How do we know that there isn't some overlap between those tasks listed in figure 1 above?
- Are there in fact some tasks in figure 1 that can be completed concurrently which may result in efficiencies?
- Which people will complete which of the above tasks: what work will the accountant, the bookkeeper, the lawyer, the IT worker and others perform? This is critical because a weighted average hourly wage is later presented in the NPRM and it is impossible to determine its accuracy without knowing how many hours are factored in for which of the above job classifications.
- Exactly what data will the president and the treasurer have to review?

- How will the president and treasurer independently determine the accuracy of thousands of pension payments to plan participants or the accuracy of hundreds of employer contributions to a health and welfare trust?

For each item in the above figure, dozens of unanswered questions exist. And once again, it is a one-size fits all approach—regardless of the size of the union and the size of the trust, the same amount of time, 71.7 hours (note, most likely due to rounding error, this figure should be 71.8 hours), is allotted. The notion that on average, it should take 71.7 hours to complete the non-recurring, recordkeeping and reporting tasks to file one Form T-1 is simply unsupported by any detail, data, methodology and most importantly, any comprehensive definition of all the tasks involved.

Results of an on-line survey of 3(l) trusts: While it is not possible for me to more closely examine the burden estimates for LM-2 filers, and although I was severely constrained by the available time, I decided to assess the burden estimates for the work of the trusts in compiling the itemized receipt, disbursement and payment to employees and officers information. In order to do this, I conducted an on-line survey of 3(l) trusts in the last two weeks; forty different trusts responded to the survey by the cut-off date. Respondents selected which annual receipts bracket they fell into; responses are summarized below in figure 2.

Figure 2
Number of on-line survey respondents by annual receipts of trust

Beginning point in millions of dollars in receipts	Up to (ending point) in millions of dollars in receipts	Number of respondents in this category
0	25	13
25	100	7
100	500	10
500	Over 1,000	10
Overall		40

Time required to generate receipts itemization information: On tracking and reporting receipts in excess of \$10,000 per payor, trusts were asked how many could presently track the name, address, purpose of each and whether or not they could currently generate a spreadsheet, CSV or XML file with that information. As figure 3 below shows, a significant proportion of those respondents could not currently perform all of these functions, which means that additional time and expense will be necessary before these trusts are able to provide the necessary information to LM-2 filers who must also file the Form T-1

Figure 3
Present capabilities of survey respondents to generate required receipts itemization information for Form T-1 filers

Income (in millions of dollars)	Can't track names of payors	Can't track addresses of payors	Can't ID the purpose of the payment	Can't write queries to itemize for Form T-1
Under 25	3	1	1	2
25 to 100	2	1	0	1
100 to 500	1	1	0	3
500 Plus	4	2	1	4
Total	10	5	2	10

Next, I asked those who had indicated that they presently could perform the functions listed in the above table to estimate the number of hours required to generate, validate and adjust the itemization list of receipts. The averages and standard deviations for each plan income category are summarized in figure 4 below. The overall for all four annual receipts categories is 54.5 hours to generate this information, with a standard deviation of 93.5; again, keep in mind that these averages are for those trusts who presently have the capability to do so! This is considerably higher than the burden hours shown for this activity in figure 1 above (9.8 hours non-recurring burden, 1.2 hours reporting burden).

Figure 4
Estimated average and standard deviation of generating itemized receipt information for Form T-1 filers (of those who presently have the capability to do so)

Category	Average hours	Std Deviation
1	17.2	24.0
2	43.8	38.1
3	39.9	41.1
4	129.6	167.6
Overall	54.5	93.5

Finally, my survey asked respondents "approximately how many individual contributors or payors would have paid in an aggregate of \$10,000 or more in the plan year?" The information is summarized in figure 5.

Figure 5
Estimated average and standard deviations for number of payors for who itemized
information must be generated for Form T-1 filers

Category	Average number of payors	Std Deviation
1	97.8	156.2
2	1,447.0	2,715.7
3	1,102.1	1,313.9
4	3,202.5	3,231.8
Overall	1,429.3	2,353.0

Because we do not have any detailed information about the average number of itemization entries and sheets each T-1 form would have, it is impossible to determine if the time allotted for generating this information is adequate. However, we also ought to consider the additional time involved in uploading this information to the Form T-1 and the considerable length this will add to many Form LM-2s.

Time required to generate disbursements itemization information: I asked respondents a similar set of questions here as I did for receipts. In figure 6 below, we see a similar number of trusts presently lack the capability to generate the necessary itemization information, which means that additional acquisition costs will have to be added.

Figure 6
Present capabilities of survey respondents to generate required disbursements
itemization information for Form T-1 filers

Income	Can't track names	Can't track address	Can't ID purpose	Can't write queries
Under 25	3	1	1	2
25 to 100	3	2	1	3
100 to 500	1	0	0	3
500 Plus	2	2	2	3
Total	9	5	4	11

The same pattern is evident here as was the case for tracking receipts. Relatively few cannot track the address and identify the purpose of each payee, but at least double that number cannot track the payee names or write queries to generate the T-1 information. In the case of the latter, that is 11 of 40, slightly more than a quarter of the trusts not currently having the capability to generate the itemized list of payees.

Figure 7 below documents the average number of hours (and standard deviations) required to prepare the necessary disbursements information by the respondents who currently have the necessary capabilities. Once again, while there is considerable variation in each income category, the overall average is 56.0 hours compared with the Department of Labor's estimate of 9.8 hours of non-recurring burden in the NPRM.

Figure 7

Estimated average hours and standard deviation of generating itemized disbursements information for Form T-1 filers (of those who presently have the capability to do so)

Category	Average hours	Std Deviation
1	30.0	37.2
2	39.5	43.3
3	43.0	38.2
4	117.3	171.6
Overall	56.0	94.1

Finally, figure 8 below summarizes the average (and standard deviation) number of payees who each respondent estimated it would have. Again, while there is considerable variation in each income category, there are considerably more itemized disbursements than there are receipts. Once again, this will have to be considered in whether or not adequate provision has been made for uploading the information into the T-1 Form and the impact this will have on the length of many LM-2 forms.

Figure 8

Estimated average and standard deviations for number of payees for who itemized information must be generated for Form T-1 filers

Category	Average number of payees	Std Deviation
1	2,553.6	6,576.1
2	1,500.0	1,179.0
3	16,700.0	19,986.2
4	64,577.8	81,383.7
Overall	26,622.4	54,953.8

Time required to generate itemized information about payments to officers and employees: Figure 9 below summarizes the average number of employees receiving payments of \$10,000 or more per year for each income category of responding trusts. While there is somewhat less variation here than is the case for the receipts and disbursements, what is evident is that there will be a considerable amount of itemization to be provided, particularly by the larger trusts.

Figure 9
Average (and standard deviation) number of employees receiving payments of \$10,000 or more per year requiring itemization for T-1 filers

Category	Average number of employees	Std Deviation
1	2.4	3.4
2	37.6	60.2
3	38.8	24.9
4	334.1	498.7
Overall	114.9	303.8

Finally, figure 10 below summarizes the estimated average burden hours associated with generating the required employee and officer payments of \$10,000 or more by each income category of responding trusts. This overall average of 26.1 compares with the NPRM estimate of 2.8 non-recurring hours.

Figure 10
Estimated average hours and standard deviation of generating itemized officers and employees receiving \$10,000 or more information for Form T-1 filers (of those who presently have the capability to do so)

Category	Average hours	Std Deviation
1	11.1	12.5
2	36.4	37.0
3	34.4	56.8
4	32.3	22.3
Overall	26.1	29.2

It is clear from the preceding that the non-recurring burden estimates for these three functions that all trusts meeting the reporting threshold must perform are significantly flawed, as figure 11 below presents; here, the NPRM understates the average hourly burden by a factor of six (6)!

Figure 11
Average burden hours from survey versus NPRM burden estimates for trusts compiling the necessary itemization information

Category	On-line survey results for 40 3(l) trusts	NPRM assumptions (from figure 1 above)
Receipts itemization	54.5	9.8
Disbursements itemization	56.0	9.8
Payments of \$10,000 to officers and employees	26.1	2.8
Overall	136.6	22.4

I am not suggesting the NPRM should have utilized time-and-motion studies to generate allowed times for each task listed in figure 1; rather, I am saying that the NPRM should make their methodology, data, assumptions and calculations used to determine these time values explicit so that work measurement experts, financial officers, accountants, attorneys and union officials can determine whether or not the allotted times are indeed reasonable, in accordance with generally accepted principles of work measurement. We simply have no idea at all how the time values in the above excerpt (or table) were derived and whether the tasks they are associated with are completely specified.

The information contained in Table 3 of the 3/4/2008 Federal Register is identical to that in the 2006 final rule, even though the exemption for trusts filing Form 5500 has been removed. In fact, whether the LM-2 filer is relatively small (Tier 1) or large (Tier 3) or the trust is small or large in scope or size, DOL allocates the same number of hours, 71.7, to complete the Form T-1! This "one size fits all" approach is not supported by any methodology or data that any work measurement analyst would expect.

Step 2: Estimating the number of filers who have one or more trusts to report

The major flaws in the NPRM with regard to this second step are that 1) the assumptions used to estimate the number of T-1 filers in each of the three tiers are not supported by any explicit data or methodology, and 2) even though the number of T-1 forms is ultimately inflated by 30% to cover the loss of the Form 5500 exemption, there is no justification for using the 30% multiplier. Additionally, actual data on the number of LM-2 filers who report at least one or more Section 3(l) trusts is actually available and was not utilized in this NPRM. These data show that the NPRM's estimated percentages significantly understate the number of LM-2 filers with at least one or more reportable trust.

The NPRM here relies upon estimates of the number of LM-2 filers in each of three tiers who may report trusts (when DOL apparently has no idea how many trusts will be covered by the proposed rule). Without stating any methodology or justification whatsoever, it estimates that ten percent (10%) of tier 1 filers will have at least one trust; twenty-five percent (25%) of tier 2 filers will have at least one trust and all of tier 3 filers will have at least one trust requiring a Form T-1. To “compensate” for the broadening of the reporting requirement, the NPRM applies a 30% increase to the number of T-1 forms. DOL provides no basis in the NPRM whatsoever for the 30% increase. It is noteworthy that these assumptions have changed over time: in the 2002 rule, 15% of Tier 1 and 35% of Tier 2 filers were assumed to have at least one T-1 form to file; in the latest version of the rule, these assumptions have been revised to 10% of Tier 1 and 25% of Tier 2 filers, with no explanation whatsoever.

LM-2 filers must complete item 10, which asks them to check “Yes” if they have any reportable Section 3(l) trusts and then in item 69, it must provide the name, address and details about the trust. While not all of these reported trusts will necessarily require a Form T-1 to be filed, at least this does present a readily available number of LM-2 filers who report at least one trust.

The proposed T-1 rule uses a somewhat different threshold to determine what trusts will require the filing of a Form T-1 by the LM-2 filer. In addition to meeting the Section X criteria of the LM-2 form (and the instructions for items 10 and 69), there is a dollar threshold and a “control test” to be met. Therefore, it is possible for an LM-2 filer to check “yes” to item 10 and list one or more trusts in item 69, when in fact they may not meet the T-1 filing threshold. Referring to the matrix below, these would be considered “false positives”. By the same token, there are some LM-2 filers who are not aware they have reportable trusts who have checked “No” to item 10 (or who have checked “Yes” and do not list those trusts)—these correspond to the “false negatives” in figure 12 below.

Figure 12
False and True Positive Matrix with respect to LM-2 trust and Form T-1 reporting thresholds

	Requires the filing of Form T-1	
Listed in items 10/69 of LM-2 as a trust	No	Yes
No	True negative	False negative
Yes	False positive	True positive

True positives (see above matrix) here would be those instances where a trust is listed in item 69 of the LM-2 form and meets the threshold test required for filing a Form T-1. In the time available to us, it is not possible to separate false positives from true positives, but nevertheless, the total number of LM-2 filers checking "Yes" to item 10 and the total number of trusts listed in item 69 does indeed provide actual data to gauge the burden hours and costs of the proposed rule and at the same time, allows us to test the reasonableness of the assumptions made in the NPRM. The only reference made in previous and current proposed and final Form T-1 rules to a specific number of entities was at 68 FR 58444 which listed approximately 900 subsidiary organizations. If an accurate burden estimate is to be made for all T-1 forms, then it is imperative that we use actual data, even though the total number of trusts generated below may include a certain number of false positives; on the other hand, there are also likely an offsetting number of false negatives, which are those trusts which are not currently listed in the Form LM-2, such as job targeting funds, credit unions, industry advancement and scholarship funds. At the present, there simply isn't time available to calculate the number of false positives and false negatives, and the data presented below do provide us with an actual number for burden estimation and a check against the assumptions.

Using the most complete database of LM-2 filers currently available (2006), I filtered those LM-2 filers by tier. In figure 13 below, column A shows each tier followed by the number of 2006 LM-2 filers by tier. Column C presents the number of 2006 LM-2 filers who checked "Yes" to item 10, which indicated they had a "reportable trust". Column D shows the result of column C divided by column B in percentage format, which can be contrasted with column E, which show the NPRM's estimates.

Figure 13
Number of LM-2 filers who will have at least one trust, based upon 2006 data

A. Tier	B. Number of 2006 LM-2 Filers by tier	C. Filers <u>actually</u> reporting one or more trust	D. Actual % (column C divided by column B)	E. DOL Assumption of percent filers with one or more trust by tier	F. Equivalent number using DOL assumptions (column E times column B)
1	1307	375	28.70%	10%	130.7
2	3174	1856	58.50%	25%	793.5
3	53	48	90.60%	100%	53
Total		2,279			977

Clearly, the NPRM significantly understates the number of LM-2 filers who have at least one reportable trust. When the NPRM percentage estimate by tier in column E is multiplied by the number of 2006 LM-2 filers in column B, the result is shown in column F and here, we can see the magnitude of this underestimate. In total, the NPRM's assumptions would yield a total of 977 LM-2 filers with one or more trusts, **whereas actual OLMS data says there would be 2,279, nearly two and one-half times the NPRM estimate!**

The import of this significant underestimate of the number of LM-2 filers with at least one reportable trust should be obvious. The NPRM, even with a 30% increase factor (see below), estimates that there will be only 2,476 T-1 forms filed, **which is only 197 fewer trusts than there are 2006 LM-2 filers with at least one reportable trust.** Since the NPRM assumes that Tier 2 and 3 filers with reportable trusts are likely to have 2 and 4 T-1's each to file respectively, this means that the total number of T-1's is significantly underestimated. To determine the exact number of trusts that would have been reportable using 2006 data would mean individually counting the 2,279 LM-2 filers Schedule 69 entries. Available time does not permit this, so instead, below, I report on two random samples of this database, which show additional flaws in the NPRM's assumptions.

Step 3: Estimating the average number of Form T-1's filed by LM-2 filers with trusts.

In this next step, the major flaws are that once again, the NPRM relies upon undocumented assumptions rather than actual data on the number of T-1 forms that would be filed. Using e.LORS data, I show that the estimates relied upon by the NPRM significantly understate the number of T-1 forms that will be filed. The following analysis shows that the NPRM estimate of the number of T-1 forms that will be filed is one-third of what is calculated from e.LORS data.

The next step for the NPRM is to determine the average number of reportable trusts for LM-2 filers at each of the three tiers who actually had one or more reportable trusts. Once again, instead of using actual data, the NPRM relies upon undocumented assumptions.

For Tier 1 filers, the NPRM assumed the 10% with reportable trusts will file an average of one T-1 form; for those 25% of Tier 2 filers with trusts, NPRM assumed they would file an average of two T-1 forms and for those Tier 3 filers, an average of four is assumed.

On page 11774 in table 2, the NPRM then multiplied these assumed frequencies (number of T-1's per tier) by the percentage in each tier who would file a T-1 times the number of LM-2 filers in each tier. The resulting total was inflated by 30%. We have absolutely no idea where the 30% came from.

Using the 2006 e.LORS database (the most contemporary and currently available year, at this writing), it is possible to filter out those LM-2 filers who checked "Yes" to item 10, to go to item 69 and to find the itemized trusts (LM-2 filers who check "Yes" to item 10 are instructed to provide the name and other identifying information about each trust). In the limited time available, it was not possible to physically count all the itemized trusts, so two samples were generated to test the DOL assumptions.

In the first sample, a random sample of 118 local unions in three building trades international unions with at least one reported trust in 2006 were selected. Altogether, these 118 unions reported 408 trusts; data are summarized in figure 14 below; figure 15 shows the type of trust that was determined by reviewing the contents of item 69 for each of the 118 filers.

Figure 14: Number of trusts reported by all filers reporting at least one trust in their 2006 LM-2

Number of Trusts Itemized in Item 69	Number of LM-2 filers reporting this number of trusts	Percentage of total	Total trusts
1	31	26.3%	31
2	17	14.4%	34
3	19	16.1%	57
4	18	15.3%	72
5	16	13.6%	80
6	9	7.6%	54
7	5	4.2%	35
8	1	0.8%	8
9	1	0.8%	9
28	1	0.8%	28
Totals	118	100.0%	408

Regardless of which tier these 118 filers fell into, the average number of trusts reported (under the current reporting rule) is nearly four. When disaggregated by tier, a total of 12 of the 118 filers were in Tier 1, and one was in Tier 3; the remainder in Tier 2. Tier 1 statistics are presented in figure 15 below, followed by Tier 2 statistics in figure 16. Please note that the NPRM assumes that Tier 1 filers will have only one T-1 form to file; our sample shows it will be double that.

In the next figure, the type of trust is tabulated for these 118 filers. It is significant to note that over half of the trusts itemized in item 69 by these 118 filers (52%) are joint labor-management trustee health and welfare and pension plans for which a Form 5500 is normally filed.

Figure 15: Type of Trust for 118 LM-2 building trades 2006 filers

Trust type	Count	Pct of total
Apprenticeship/Training/Education	83	20.3%
Health and welfare	93	22.8%
Pension, annuity, DC or DB	120	29.4%
Vacation	17	4.2%
Market recovery or LMCC	13	3.2%
Death Benefit	22	5.4%
Building corporation or fund	9	2.2%
Scholarship Fund	10	2.5%
Other (includes supplementary unemployment benefits, credit union, sickness benefits)	41	10.0%
Total	408	100.0%

Figure 16 shows the number of trusts reported by Tier 1 filers in our sample, which shows that many LM-2 filers, even those in Tier 1, may have multiple T-1 forms to file.

Figure 16: Number of trusts reported by Tier 1 filers only

Number of trusts for Tier 1 filers	Number of filers by number of trusts	Total Trusts
1	6	6
2	2	4
3	2	6
4	2	8
Total	12	24
Weighted average		2

The weighted average above is simply the total number of trusts reported by Tier 1 filers in the same (24) divided by the number of Tier 1 filers (12), which gives us an average of two (2) trusts per filer, compared to the NPRM assumption of one T-1 per Tier 1 filer. Thus, using actual data shows that the NPRM assumption about the number of trusts per T-1 filer in the first tier is not reasonable.

Tier 2 filer data are presented below in figure 17. The weighted average here is calculated in the same fashion, 361 total trusts reported by Tier 2 LM-2 filers who report one or more trusts divided by 103 LM-2 filers, for an average of 3.50 T-1 forms per Tier 2 filer, compared with NPRM's estimate of two per filer.

Figure 17: Number of trusts reported by Tier 2 filers only

Number of trusts for Tier 2 filers	Number of filers by number of trusts	Total trusts
1	23	23
2	15	30
3	17	51
4	16	64
5	16	80
6	9	54
7	6	42
8	1	8
9	1	9
Total	103	361
Weighted	3.50	

Therefore, both assumptions used by the NPRM to determine the number of T-1's for each LM-2 filers with reportable trusts significantly underestimate the number of T-1's that will be filed. Again, it must be stressed that the NPRM presents absolutely no data in support of its assumptions, and here, actual e.LORS data is used to refute their very own assumptions again.

In the second sample, all 2006 Tier 3 LM-2 filers were included in the sample. The results are reported in figure 18 below. The left hand column shows the total number of trusts itemized and the right hand column shows the total number of 2006 LM-2 filers who itemized this many trusts. It should be noted that several Tier 3 filers checked "Yes" to item 10 but did not itemize any trusts in item 69.

Figure 18
Tabulation of the number of trusts itemized in item 69 of the 2006 LM-2

# of 2006 Trusts	Total # of LM-2 filers reporting this many trusts
1	7
2	4
3	4
4	6
5	3
6	1
7	2
8	1
9	1
10	1
11	2
12	1
13	2
14	2
17	1
21	1
24	1
28	1
29	1
196	1
Item 10 checked "Yes" but no trusts itemized	4
Item 10 checked "No"	6
Grand Total	53
Average	12.00
Median	5.00

While the mean (average) number of trusts is 5.0, the median (midpoint) is 12, because one union reported 196 trusts in item 69. This compares with the NPRM estimate of 4 T-1's per filer. While this difference may seem small at this tier, it is cumulative when considered in light of the above-noted discrepancies in estimating the number of T-1 filers in Tiers 1 and 2. Figure 19 below uses the actual 2006 e.LORS data and analysis from the above pages to calculate the number of T-1 filers and compares this with the NPRM estimate of 2,476.

Figure 19
Calculation of number of T-1s using 2006 actual and sample data (instead of assumptions)

A. Tier	B. Number of 2006 LM-2 Filers by tier	C. Filers <u>actually</u> reporting one or more trust	D. Actual % (column C divided by column B)	E. Average number of trusts from 2006 data	F. Total trusts
1	1307	375	28.70%	2.0	750
2	3174	1856	58.50%	3.5	6,496
3	53	48	90.60%	5.0	240
Total		2,279			7,486

In figure 19 above, the first four columns from figure 2 are used to show the number of 2006 LM-2 filers by tier, the filers who actually reported one or more trusts and the resulting percentage of LM-2 filers reporting at least one trust. In column E, the average number of trusts per tier have been substituted from figures 4 (Tier 1), 5 (Tier 2) and 6 (Tier 3) above, and these are presented in column E. **Note here that I used the median value of 5.0 from Tier 3 (figure 6 above), not the average (12.0) that would have significantly increased the number of trusts; I did not do so because of the one outlier (196 trusts reported for one filer).** Column F is simply the average number of trusts from the 2006 data times the number of filers reporting at least one trust in the same year. The three tier totals in column F sum to 7,486, which is **over three times as many T-1 trusts as the NPRM estimates!**

Perhaps to confuse matters further, the NPRM estimates used to calculate the number of T-1 filers has also changed over time. In figure 20 below, the different assumptions about the percent of T-1 filers and number of T-1's filed by tier is shown for the 2002, 2003 and 2008 publications (2002 NPRM at 67 FR 79297; 2003 Final Rule at 68 FR 58444). The different assumptions from 2008 are highlighted and to focus the impact of the different assumptions, these three different sets of assumptions are used to calculate the number of T-1's that would be filed using the same data, from 2006.

Figure 20
Different NPRM and final rule assumptions regarding number of T-1's filed, by tier and total, using 2006 data

Item	2002	2003	2008
Tier 1: % who will file a T-1	10%	15%	10%
Tier 1: Number of T-1's each will file	1.0	1.0	1.0
Tier 2: % who will file a T-1	35%	35%	25%
Tier 2: Number of T-1's each will file	2.3	2.6	2.0
Tier 3: % who will file a T-1	100%	100%	100%
Tier 3: Number of T-1's each will file	5.0	5.0	4.0
2006 Tier 1 filers	1,307	1,307	1,307
Total T-1's filed by Tier 1 filers	131	196	131
2006 Tier 2 filers	3,174	3,174	3,174
Total T-1's filed by Tier 2 filers	2,555	2,888	1,587
2006 Tier 3 filers	53	53	53
Total T-1's filed by Tier 3 filers	265	265	212
Subtotal	2,951	3,349	1,930
Multiplier	-	-	30%
Adjusted total T-1's filed	2,951	3,349	2,509

They key point to be drawn from figure 20 above is that previous proposed and final rules estimated a higher number of T-1's being filed in 2002 and 2003 when the estimates are applied to the same benchmark data set, 2006, (note that in 2002, the threshold for LM-2 filers was still \$200,000, but by using 2006 data, the calculations are based upon the \$250,000 LM-2 filer threshold), even though this was before the Form 5500 exemption was removed. Now, with this exemption removed, even with the 30% adjustment added, there would still be fewer T-1 forms filed in 2006 under the NPRM.

The impact of the fundamental flaws in the second and third steps above is dramatic. Using assumptions when DOL's actual data was available has resulted in DOL underestimating the number of T-1 filers by a factor of three! Even if the burden estimates in step 1 are accurate (and given the complete lack of transparency, we have no way of knowing if they are) then the overall number of burden hours is completely misstated by this NPRM. But there is still one more step, the estimate of the hourly burden cost and as is described below, and there are many more flaws here as well.

Step 4: Estimating the total burden cost:

In converting the total burden hours into burden cost, the NPRM has a number of serious problems in developing an hourly burden cost. First of all, it does not make any provision for fringe benefits on top of hourly wage rates; this omission will understate the hourly burden cost by at least 30%. Secondly, because of the lack of transparency in step 1 and here, it is not possible to determine whether the weighted average hourly burden rate is correct or not. Thirdly, the burden cost estimate makes no provision for equipment or other data transfer costs, or even what the trusts will have to charge the LM-2 filers for preparing the data necessary to complete the T-1 form. Finally, without specifying which NCS survey was utilized, it is not possible to determine whether or not the hourly wage rates used are truly representative of what labor organization and trust officers and employees are actually paid.

This NPRM then attempts to calculate the total annual burden cost by deriving a weighted hourly wage rate (no fringe benefits are added) and then multiplying this by total burden hours. There are several very significant problems here. First of all, even though the NPRM used fringe benefits in its calculation of the Department's burden (page 11777, LH column), it did not do so in estimating labor union costs. Generally speaking, an additional 30% can be added to wage costs to account for health insurance, pension and other fringe benefits (see for example <http://www.bls.gov/news.release/pdf/ecec.pdf>), particularly where unionized workers are concerned. Even if the NPRM's weighted average wage costs are correct, they would understate true costs by at least 30%.

Secondly, this NPRM did not make provisions for all the different job classifications DOL indicated they would in estimating hourly burden cost. On page 11774, middle column, the NPRM indicated

Labor costs reflect the Department's assumption that labor organizations and trust will rely upon the services of some or all of the following positions (president, secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant)

A comparison with Table 4 (page 11776) shows that no provision was made for an inside accountant, computer programmer, lawyer or consultant). Since there is no detailed task description (Step 1), there is no way to verify what job classifications were used in this estimate and to what degree.

Thirdly, even though this NPRM claims on page 11774 that "[T]he Department's cost estimates include costs for both labor and equipment that will be incurred by filers", there is no evidence that any consideration was given for either trusts or LM-2 filers having to

acquire hardware, software, peripheral devices or other equipment necessary to prepare, upload/download and store the data required to file the T-1 form.

Participants in the on-line survey I conducted in the last two weeks were asked to estimate the cost they would have to pass on to each LM-2 filer for generating the required information. While there was variation within the results, the average and standard deviation are provided below in figure 21.

Figure 21
Average costs to LM-2 filers for providing data necessary for filing Form T-1 from on-line survey of trusts (n=40)

Category	Average	Std Deviation
Under 25 million	\$7,745.45	\$6,042.41
25 to 100 million	\$23,416.67	\$16,632.55
100 to 500 million	\$8,250.00	\$18,496.78
500 million or more	\$37,160.00	\$66,466.91
Overall	\$18,147.81	\$35,768.25

Trusts are required by law to charge for providing this data to LM-2 filers. This cost will be significant, averaging \$18,147.81 for all filers. While the cost may be somewhat less for smaller trusts, the NPRM makes no provision was made for them by this NPRM.

Finally, we have no idea which NCS survey (other than service sector) the NPRM used to obtain the wage rates described above and how they "adjusted" them to come up with Tier 1, Tier 2 and Tier 3 hourly wage rates. It is therefore not possible to comment on the accuracy of their data given the complete lack of transparency, but an hourly wage rate for an accountant of \$27.22 lacks credibility because it is so low??.

Conclusion: As noted earlier, there are two key calculations to accurately stating the total burden hours and total burden costs:

$$\begin{aligned} \text{Total burden hours} &= \text{Step 1} \times \text{Step 2} \times \text{Step 3} \\ \text{Total burden cost} &= \text{Step 1} \times \text{Step 2} \times \text{Step 3} \times \text{Step 4} \end{aligned}$$

It is mathematical law that if just one of the terms on the right hand side of either equation above is flawed, that the product on the left-hand side of the equation will be similarly flawed. As has been demonstrated, the terms generated in all four of the steps are flawed, which means the overall result is therefore flawed.

If more detailed data, assumptions and methodology would have been provided, a more exhaustive analysis might have been conducted; therefore, the flaws enumerated in this

testimony must be viewed in this light. The following problems identified herein with each step of the calculations must therefore be viewed as a partial list.

In this first step, the major flaws include the failure to describe in sufficient detail all the specific tasks the LM-2 filer and trust must complete, to specify who (which person, or at least which job classification) will complete the tasks so specified and to provide a methodology for how the time values were arrived at. Survey data of some 40 trusts was presented here which shows that the burden estimates for generating the receipts, disbursements and payments to employee and officer information to significantly underestimate the time required.

In the second step the assumptions used to estimate the number of T-1 filers in each of the three tiers are not supported by any explicit data or methodology, and that even though the number of T-1 forms is ultimately inflated by 30% to cover the loss of the Form 5500 exemption, there is not justification for where the 30% came from. Additionally, actual data on the number of LM-2 filers who report at least one or more Section 3(l) trusts is actually available and was not utilized in this NPRM. These data show that the NPRM's estimated percentages significantly understates the number of LM-2 filers with at least one or more reportable trust.

In step 3, the NPRM relied on undocumented assumptions rather than actual data on the number of T-1 forms that would be filed. Using e.LORS data, it was demonstrated that the estimates relied upon by the NPRM significantly understate the number of T-1 forms that will be filed; the NPRM estimate of the number of T-1 forms that will be filed is one-third of what is calculated from 2006 e.LORS data.

In converting the total burden hours into burden cost in step 4, the NPRM has a number of serious problems in developing an hourly burden cost. First of all, it does not make any provision for fringe benefits on top of hourly wage rates; this omission understates the hourly burden cost by at least 30%. Secondly, because of the lack of transparency in step 1 and here, it is impossible to determine which tasks are performed by which job classifications, so it is not possible to determine whether the weighted average hourly burden rate is correct or not. Thirdly, the burden cost estimate makes no provision for equipment or other data transfer costs, or even what the trusts will have to charge the LM-2 filers for preparing the data necessary to complete the T-1 form. Data presented from a survey of 40 trusts shows that these costs will be significant and the disruption caused by having to prepare the data for the LM-2 filers within their 90-day filing window will be considerable. Finally, without specifying which NCS survey was utilized, it is not possible to determine whether or not the hourly wage rates used are truly representative of what labor organization and trust officers and employees are actually paid.